

REMARKS

Claims 14 - 40 are pending in this continuation (RCE) application. Concurrently, Applicants are presenting an English language brochure from Degussa, (printed 9/2001) the manufacturer of the Aerosil®200 brand of pyrogenous silica which is referenced at page 9 of the specification. Applicants do not have an English language version of the Degussa brochure which was submitted previously.

With respect to the Final Rejection of record prior to the filing of this continuation (RCE) application, some additional observations are believed to be appropriate.

First, the rejection under 35 U.S.C. § 112 is respectfully traversed. Pyrogenous silica has been identified in the specification at page 9 with reference, for the sake of example only, to the aforementioned Degussa product. The brochure filed concurrently describes, *inter alia*, the Aerosil®200 brand of pyrogenous silica with respect to details such as method of production, general description, and surface chemistry. Further, it is noted that U.S. Patent No. 5,055,208 recently cited by the Examiner refers at column 2, line 47 to pyrogenic silica. Accordingly, it is submitted that the term is sufficiently understood in the art such that any further definition should not be required. The DeGussa brochure even explains how the material is made and that the product is of amorphous structure. (In this regard, silica is understood to be generally of crystalline structure.) It is respectfully pointed out that the Official Action has not cited any basis to support a conclusion of lack of clarity for the term "pyrogenous silica".

The prior rejection based on DeBoel under 35 U.S.C. § 103 is respectfully traversed. The intumescent material described in the DeBoel patent document is hydrated alkali metal silicate. (DeBoel, Col. 1, lines 15-17). Adjuvants include aluminum phosphate and colloidal silica. (DeBoel, Col. 1, lines 18-23). It is preferred that the adjuvant should be present in a proportion of less than 20%. (DeBoel, Col. 2, lines 18-22).

There are two independent claims in the present application, Claims 14 and 30. Claim 14 refers to the intumescent layer as “containing primarily a phosphate-based compound as the intumescent material” which is different from the hydrated alkali metal silicate of the DeBoel document. (In the DeBoel document, the phosphate is only present as an adjuvant.) Second, Claim 14 refers to a substance from the group consisting of pyrogenous silica and a mixture of pyrogenous silica and alumina. There is no longer any dispute that pyrogenous silica differs from silica. Applicants submit that there is no requirement that unexpected results be demonstrated when a material different from that of the reference is used. Such a showing may, in some instances, be appropriate when a different amount of a material is used when compared to the reference, but not when a different material is used.

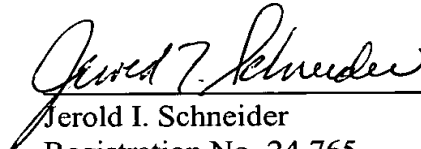
Independent Claim 30 refers to “providing for the intumescent layer primarily a phosphate-based solution having a first index of refraction”. Again, this differs from DeBoel where the primary or base intumescent material is the hydrated alkali metal silicate.

It is noted with appreciation that Claims 18, 21, 24, 25 and 28 were not rejected based upon prior art.

Should the Examiner be of the opinion that a conference would expedite the prosecution of this application, the Examiner is both requested and encouraged to contact Applicants' Attorney at the telephone number given below.

Respectfully submitted,

PIPER RUDNICK LLP



Jerold I. Schneider
Registration No. 24,765
Attorney of Record

1200 Nineteenth Street, N.W.
Washington, D.C. 20036-2412
Telephone No. (202) 861-3900
Facsimile No. (202) 223-2085